disabled without being so found by a judge of the court of protection under the 1959 Act.

It is not clear whether the assistant registrar did not dismiss the action because the plaintiff was not a mentally disordered person as defined in the Act or because the medical report was insufficient to show that the plaintiff was of unsound mind. The medical report refers to the plaintiff's condition at about seven months before the issue of the writ and therefore, without further medical and more recent evidence, it might be insufficient for the purpose of the application to dismiss. All that is known is that the plaintiff was in a vegetative state and physically unable to manage himself. Presumably the assistant registrar was not entirely satisfied that this evidence was not sufficient to show that the mental condition of the plaintiff was such that he would have been unable to give any instructions whatever for the commencement of the action, and this would provide one explanation for the form of the order he made. In any case, the application to dismiss the action must fail on the ground that the plaintiff was not a person under disability for the purpose of O 76 at the time he commenced this action.

For the above reasons, I find that there was neither a legal nor a factual basis for an order to stay the action until the plaintiff's mental condition be determined. The appeal is allowed with costs here and below.

Appeal allowed.

Solicitors: *YH Cheong*; *Murphy & Dunbar*.

Reported by *Terence Tan Bian Chye*

Asia Polyurethane Mfg Pte Ltd v Woon Sow Liong

HIGH COURT (SINGAPORE) — SUIT NO 2340 OF 1989
CHAN SEK KEONG J
31 MARCH 1990

Contract — Covenant in restraint of trade — Consideration to enforce covenant — Whether continuing employment would constitute consideration — Length of restraint — Previous covenant for shorter period

Civil Procedure — Interim injunction — Failure to make full and frank disclosure — Court's discretion to discharge injunction

The plaintiffs obtained an ex parte injunction restraining the defendant for five years from being employed or advising any company or any business of a similar nature to the business carried on by the plaintiffs or canvassing any customer of the plaintiffs. The defendant had signed a secrecy deed containing the covenant in terms of the injunction as he was afraid he would be dismissed from the employment of the plaintiffs if he did not. The defendant subsequently left the plaintiffs' firm and then obtained employment with a company ('Olin') which carried on the same business as the plaintiffs. The defendant, in applying to discharge the injunction, stated that the secrecy deed relied upon by the plaintiffs was the second deed he had signed and that the first deed was in exactly the same terms except that the covenant was for two years instead of five years.

Held, allowing the defendant's application:

(1) All covenants in restraint of trade are prima facie void unless it is reasonable in the interests of the parties concerned and also reasonable in the interest of the public. In the absence of any interest of the employer that requires protection, which may be trade secrets or confidential information relating to customers etc, it is contrary to public policy to restrain competition. On the evidence, the court was not satisfied that the plaintiffs had any secret process to protect.

(2) It is not a strict rule that an interim injunction must be discharged on the ground that the plaintiffs had failed to make full and frank disclosure of all material facts. The court has a discretion to maintain it if the defendant had not been prejudiced. In the present case, as the restraint period commenced from the date the defendant ceased employment with the plaintiffs and that period had not expired at the date of commencement of this action, the defendant was not prejudiced on that ground.

(3) The plaintiffs had, by stipulating a shorter period of restraint in the first deed, provided the necessary evidence that that period was sufficient to protect their legitimate interests. In the absence of any explanation from the plaintiffs, and there was no explanation as to why the covenant was extended, the court concluded that the new term of the restraint, extending the period of restraint by three years, was unreasonable.

Cases referred to

1 *Brink's-MAT Ltd* v *Elcombe* [1988] 3 All ER 188 (folld)
2 *Commercial Plastics Ltd* v *Vincent* [1964] 3 All ER 546 (folld)

Lawrence Wong for the plaintiffs.
James Goon for the defendant.

Cur Adv Vult

Chan Sek Keong J: On 9 February 1989, the plaintiffs obtained an ex parte injunction restraining the defendant:

> ... during the period of five (5) years from 14 April 1989 within the exclusive areas of all areas in Asia, East of Iran except Japan from undertaking or carrying on either alone or in partnership or be employed or interested directly or indirectly in any capacity or either directly or indirectly give advice or act as adviser to any company whatsoever in any business of a similar nature to the business carried on by the plaintiffs as at 14 April 1989 or canvassing or soliciting orders from any person firm or company who has been a customer of the plaintiffs as at 14 April 1989;

The affidavit filed by the plaintiffs in support of the application for the injunction stated the following material facts: that the plaintiffs carried on the business of manufacturing polyurethane products and systems; that they employed the defendant on 1 August 1985 as a laboratory technician; that he signed a secrecy deed (on the day it was dated, ie 25 August 1987) containing the covenant in terms of the injunction as he was afraid he would be dismissed from the employment of the plaintiffs if he did not; that on 15 March 1989, he served one month's notice of termination of employment with the plaintiffs; that in the course of employment, he acquired knowledge of the secret formulae of certain polyurethane products produced by the plaintiffs; that the defendant then obtained employment with a company called Olin Pte Ltd ('Olin') which carried on the same business as the plaintiffs; that the defendant would in all likelihood divulge the manufacturing processes and secret formulae of the plaintiffs to their detriment; that the defendant approached the plaintiffs' customers with the intention of soliciting business; that Olin was likely to begin processing polyurethane in Singapore and such operations were likely to be conducted in a manner similar to the plaintiffs.

The defendant applied to discharge the injunction. He filed two affidavits, in the first of which he stated as follows: that on the day the secrecy deed was signed, Olin's processes were different from those of the plaintiffs and that Olin had no intention to use the processes or formulae of the plaintiffs and for that reason he did not use and it was unnecessary to use his knowledge of the plaintiffs' formulae; that he went to Indonesia in 1989 to do a market survey for Olin and inadvertently visited one of the customers of the plaintiffs; that in May 1989 he was sent by Olin to their associate company in New Haven, USA to receive training in the chemical and equipment technology of Olin; that he was a graduate from the Singapore Polytechnic in chemical process technology and would not be able to obtain meaningful work and would be put to great financial hardship if he were restrained from carrying on his employment with Olin.

In the same affidavit, the defendant gave a detailed description of the manufacturing processes of the plaintiffs and Olin: (a) the plaintiffs sell two components for the processing of polyurethane: (1) Polyol Blend and (2) Isocyanate. The plaintiffs manufacture Polyol Blend in Singapore by blending raw materials sourced from local and overseas suppliers with a blending agent called CFC 11 which can be purchased in Singapore. They import the second component, Isocyanate. The plaintiffs sell these two components separately in 44-gallon drums. The customers mix the two components into polyurethane foam which is then dispensed into moulds to solidify into the required shapes and sizes. The mixing is done manually or by conventional foam machines; (b) Olin also sells Polyol Blend (already blended with CFC 11) and Isocyanate Blend, both of which are made by their associate company in USA. In Singapore, Olin will add another blowing agent CFC 12 to the two components separately. They are then packed and sold in pressurized cylinders. The mixing is done in Olin's Autofroth equipment which is used to inject the polyurethane foam into moulds to cure into the required shapes and sizes. It is claimed that the Autofrost system of processing is superior to manual mixing.

In the second affidavit, the defendant stated that the secrecy deed relied upon by the plaintiffs was the second deed he had signed and that the first deed was in exactly the same terms except that the covenant was for two years instead of five years. He also said that the general technology for polyurethane foam was known for about 50 years.

In reply to the defendant's first affidavit, the plaintiffs filed another affidavit in which their manager claimed that the plaintiffs had devised their own formulation to meet the consumer behaviour, pattern and requirements of local and regional purchasers as the materials were susceptible to chemical changes under different climatic conditions and that this 'local expertise' was invaluable as it put the plaintiffs on a more competitive level in comparison with Olin's products which were imported from USA. Counsel was unable to enlighten me on the scope of this rather vague claim, but I understood this to mean that the plaintiffs had to ensure that the Polyol Blend they manufactured was suitable to the requirements of their customers having regard to the climatic conditions prevailing in the countries where they were situated. According to a brochure exhibited to one of the affidavits filed on behalf of the plaintiffs, it would appear that they had customers in Australia, Hong Kong, India, Indonesia, Malaysia, New Zealand, Philippines, Thailand, and, of course, Singapore. However, the plaintiffs did not allege that Olin was their competitor in countries outside ASEAN, or that the climatic conditions of the ASEAN countries were sufficiently variable as to justify different formulations for their Polyol Blend.

Olin filed two affidavits. In the first affidavit, the managing director, JP, stated that the only secret worth mentioning in the present case (and counsel for the plain-

tiffs confirmed that the plaintiffs' claim to protection was based on this secret) was the Polyol Blend and that both parties had their own blend, that Olin employed the defendant to train consumers to use the Autofroth system and not to do research and development as this was done in USA and that Olin had not used the defendant's knowledge of the plaintiffs' formulae to blend their Polyol Blend. In para 5 of the second affidavit, JP said that he had been informed by Olin's chemists that they or any other competent chemist could obtain an exact analysis of the chemical composition and percentages of the chemicals therein of the plaintiffs' Polyol Blend by analysing a sample of it in a properly equipped laboratory.

In reply to these affidavits, the plaintiffs filed three more affidavits. It is not necessary to say more about them except that in none of them was there a denial of the claim of Olin's chemists that the composition of the plaintiffs' Polyol Blend could be broken down by any competent chemist. The only reply was as follows:

> I am unable to appreciate para 5 of [JP's] affidavit.... I sincerely hope that he is not suggesting that simply because a competent chemist may be able to analyse the chemical composition and the percentages of the chemicals therein that secret formulations are no longer worthy of legal protection.

This statement is an implied admission that the plaintiffs' formulations of their Polyol Blend are easily discoverable by Olin if they were minded to. In my view, this admission negated the plaintiffs' claim to any secret process in the blending of their Polyol Blend. The admission also negated the plaintiffs' claim to 'local expertise' in the sense I have understood it, ie mixing specifications to take into account climatic conditions. This 'local expertise' would also not be a secret.

Even if the 'local expertise' was referable to the mixing specifications for each individual customer, which I doubted very much, it would not avail the plaintiffs in this motion as there was no allegation that the defendant knew the specifications for each of the individual customers.

The law is clear. All covenants in restraint of trade are prima facie void unless they are reasonable in the interests of the parties concerned and also reasonable in the interest of the public. In the absence of any interest of the employer that requires protection, which may be trade secrets or confidential information relating to customers etc, it is contrary to public policy to restrain competition. On the evidence before me, I was not satisfied that the plaintiffs had any secret process or formula to protect in regard to the blending of their Polyol Blend.

As regards the covenant against soliciting the customers of the plaintiffs, it was not even suggested that Olin was not in a position to identify all or the major manufacturers of polyurethane products in the region by referring the relevant trade directories. In this respect, I have taken into account the admission of the defendant that he had, as an employee of Olin, conducted a survey of the market for Olin's products and that he had inadvertently contacted one of the plaintiffs' customers in Indonesia. It is significant to note that there was no specific allegation that the defendant solicited business from this customer.

Counsel for the defendant contended that the interim injunction should be discharged on the ground that the plaintiffs had failed to make full and frank disclosure of the material facts. It was pointed out that the plaintiffs did not disclose to the judge that the original covenant was only for two years and that its duration was extended to five by a second covenant given by the defendant after he had completed two years of employment with the plaintiffs. In my view, it is not a strict rule that an interim injunction must be discharged on this ground, if made good. The court has a discretion to maintain it if the defendant has not been prejudiced: see *Brink's-MAT Ltd v Elcombe*.[1] In the present case, as the restraint period commenced from the date the defendant ceased employment with the plaintiffs and that period had not expired at the date of commencement of this action, the defendant was not prejudiced on that ground.

However, I was of the view that the defendant could have been prejudiced on the ground that if the disclosure of the original covenant for two years were made it might have led the judge to find that the further period of three years was unreasonable since the plaintiffs had, by stipulating the shorter period originally, provided the necessary evidence that that period was sufficient to protect their legitimate interests. In the absence of any explanation from the plaintiffs, and there was no explanation as to why the covenant was extended, I concluded that the new term of the restraint was unreasonable.

Counsel for the defendant also contended that the new secrecy deed was unenforceable for lack of consideration as the defendant, when he executed the deed, was in the employment of the plaintiffs and that the plaintiffs had made no new promises or provided no new benefits. It was not disputed that a covenant in restraint of trade must be supported by consideration and that the fact that it is made under deed is not sufficient, the reason being such covenants are an exception to the rule that promises made under seal are enforceable without consideration: see 12 *Halsbury's Laws of England* (4th ed) at para 1355 n 6. In my view, there was consideration for the second covenant: it was in the plaintiffs continuing to employ the defendant. However, this finding would not assist the plaintiffs, as I have held that the new term is unreasonable. It is not possible for the plaintiffs to fall back on the first covenant as it has been effectively extinguished by the second secrecy deed and it is not possible for the court to enforce it for a period shorter than five years.

The interim injunction restrained the defendant from having anything to do with the polyurethane business in the exclusive areas for a period of five years from the date of cessation of his employment with the plaintiffs. In view of the limited interest the plaintiffs sought to protect, the injunction was plainly too wide. It is not necessary to decide whether the scope of the covenant was also too wide: see *Commercial Plastics Ltd* v *Vincent*[2] (where a restriction preventing an ex-employee from seeking employment with the said plaintiffs' competitors in the PVC calendering field for one year after cessation of employment was struck down when the said plaintiffs required protection only for trade secrets relating to the production of adhesive tape).

For the above reasons, I discharged the injunction with costs at the conclusion of the hearing.

Application allowed.

Solicitors: *Toh Weng Cheong & James Goon; Hee Theng Fong & Co.*

Reported by *Terence Tan Bian Chye*

Public Prosecutor v Tan Boon Tat

HIGH COURT (SINGAPORE) — CRIMINAL CASE NO 2 OF 1989
THEAN AND YONG PUNG HOW JJ
28 MARCH 1990

Criminal Procedure — Statements — Whether made voluntarily — Whether oppression present — Whether s 122(6) warning had to be explained to accused — Criminal Procedure Code (Cap 68, 1985 Ed), ss 121(6), 122(6) & 123

The accused was charged with trafficking in controlled drugs by transporting two bags of diamorphine. The prosecution adduced a s 122(6) statement made by the accused to the narcotics officers. The defence objected to the statement on the grounds that they were not made voluntarily and that no proper warning was given to the accused.

Held, finding the accused guilty:

(1) A narcotics officer exercising his powers under the Misuse of Drugs Act (Cap 185, 1985 Ed) is not a police officer within the meaning of s 122 of the Criminal Procedure Code. The admissibility of a statement made to him is therefore governed by the Evidence Act (Cap 97, 1985 Ed).

(2) The court was satisfied that before and after his statement was recorded the accused was not threatened or put in fear, neither was any inducement held out to him. Even if one of the interrogators had asked him to co-operate, such a request in the circumstances could not amount to or constitute an inducement. If the officers had said the words that the accused alleged they did, the court was not satisfied that what the accused said was a result of something said or done by the officers.

(3) Although one of the narcotics officers had told the accused's wife not to worry and that he and the accused were best friends, this statement was not made to the accused, though within his hearing. There was no evidence that in consequence of what was said, the officer persuaded the accused to make the statement that he made.

(4) Although the statement was made while the accused was tired, hungry and thirsty and under great stress, the court did not think that he was in such a state that he had no will to resist making a statement which he did not wish to make.

(5) Section 122(6) of the Criminal Procedure Code had a direct bearing on s 123 of this Code, and the whole exercise prescribed in s 122(6) is to forewarn the accused of the court's power under s 123(1). A failure to comply with s 122(6) cannot affect the admissibility of the accused's statement, though it may affect the weight to be attached to that statement.

(6) If no statement is made, the court in determining the guilt of the accused is, depending on the circumstances, entitled to decline to invoke s 123(1) to draw adverse inferences against the accused.

(7) The s 122(6) warning was couched in very simple English and it was not necessary to explain it. Such an attempt might even convey a wrong meaning. If the accused did not understand English, then an accurate interpretation of the charge and warning would be sufficient. This was done in the present case.

(8) At the time when the accused was arrested, there was found in the boot of his car the bags of drugs. As the car was driven by him, he had to rebut the statutory presumptions of